

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC 14

WCC No. 2008-2066

SHARON STEWART

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: After this Court determined that Petitioner was not entitled to an increased impairment rating because Petitioner failed to establish a causal relationship between her industrial injury and chronic pain, Respondent discontinued payment for Petitioner's pain patches. Petitioner petitioned the Court for an order directing Respondent to resume coverage and payment for this prescription and any other necessary pain medications. Respondent moved for summary judgment, arguing that Petitioner is collaterally estopped from bringing this second cause of action because the issue of causation was resolved in the trial concerning Petitioner's impairment rating.

Held: Respondent's motion is denied. In *Lund v. State Compensation Mut. Ins. Fund*, the Montana Supreme Court held that a second action in a workers' compensation claim which seeks a different type of benefit based on different statutory criteria than the benefit sought in the first action does not satisfy the identical issue element of collateral estoppel. In Petitioner's first action, she sought an increased impairment rating. Section 39-71-711, MCA, sets forth the statutory criteria for impairment ratings. Petitioner's current action seeks to establish Respondent's liability for payment of certain medical benefits. Section 39-71-704, MCA, sets forth the statutory criteria for medical benefits. Since the issue in the present action differs from the issue raised and decided in the prior action, collateral estoppel does not apply.

Topics:

Judgments: Collateral Estoppel. Although the parties used the terms *res judicata*, collateral estoppel, and issue preclusion interchangeably, these terms are not interchangeable, but represent different doctrines with distinct elements. *Res judicata*, or claim preclusion, bars the relitigation of a claim that the party has already had the opportunity to litigate. Collateral estoppel, or issue preclusion, bars the reopening of an issue that has been litigated and determined in a prior suit. Since the moving party discussed only the elements of issue preclusion (collateral estoppel) in its brief, the Court considered the motion to be grounded in collateral estoppel.

Judgments: Res judicata. Although the parties used the terms *res judicata*, collateral estoppel, and issue preclusion interchangeably, these terms are not interchangeable, but represent different doctrines with distinct elements. *Res judicata*, or claim preclusion, bars the relitigation of a claim that the party has already had the opportunity to litigate. Collateral estoppel, or issue preclusion, bars the reopening of an issue that has been litigated and determined in a prior suit. Since the moving party discussed only the elements of issue preclusion (collateral estoppel) in its brief, the Court considered the motion to be grounded in collateral estoppel.

Judgments: Collateral Estoppel. In *Lund v. State Compensation Mut. Ins. Fund*, the Montana Supreme Court held that a subsequent action in a workers' compensation claim which seeks a different type of benefit based on different statutory criteria than the benefit sought in the first action does not satisfy the identical issue element of collateral estoppel. In the present case, the claimant's first action sought an increased impairment rating under § 39-71-711, MCA, while the present action seeks payment for certain medical benefits. The statutory criteria for medical benefits are set forth at § 39-71-704, MCA. Because the current action seeks a different type of benefit based on different statutory criteria than the benefit sought in the first action, the identical issue element of collateral estoppel is not satisfied.

Jurisdiction: Workers' Compensation Court. The insurer argued that this Court lacks the jurisdiction to hear a claim in which the claimant contended that the insurer should continue to pay for a prescription it had previously paid. The insurer argued that the claimant's claim could only be based on equitable estoppel, and that this Court does not have jurisdiction to sit in equity. However, §39-71-2905(1), MCA, gives this Court the jurisdiction to hear disputes under the Workers' Compensation Act, and this case involves

a dispute concerning the entitlement to a benefit under the WCA. Therefore, the Court has the jurisdiction to resolve the dispute.

¶ 1 Respondent Liberty Northwest Insurance Corporation (Liberty) moved for summary judgment on the grounds that Petitioner Sharon Stewart's (Stewart) claim is collaterally estopped because this Court resolved the issue of causation in the trial concerning Stewart's impairment rating.

FACTUAL AND PROCEDURAL BACKGROUND¹

¶ 2 On August 26, 2002, Stewart suffered an injury of her right leg in the course and scope of her employment with Gallatin Laundry Company. Thereafter, Liberty accepted liability for the claim and paid certain wage loss and medical benefits.

¶ 3 Two days after her workplace injury, and throughout the next several months, Stewart's medical providers noted Stewart suffered pain and soreness in her right leg.

¶ 4 Stewart underwent a series of treatments for her work-related injury, including knee surgeries on October 1, 2002, November 26, 2002, and December 19, 2003.

¶ 5 On March 17, 2004, Stewart was diagnosed with "a chronic regional pain syndrome."

¶ 6 Based on her chronic regional pain syndrome diagnosis, Stewart filed a petition for an increased impairment rating.

¶ 7 A trial regarding the increased impairment rating was held August 9, 2006.

¶ 8 On September 14, 2007, this Court issued its Findings of Fact, Conclusions of Law and Judgment on the increased impairment petition. Stewart's request for an increased impairment rating was denied and her petition was dismissed with prejudice. The Court based its judgment on the finding and conclusion that Stewart did not present evidence establishing a causal connection between her initial industrial injury or subsequent surgeries and the chronic pain condition, and thus failed to establish the essential element of causation required for the increased impairment rating.

¹ The facts in this chronology are taken from: the Findings of Fact, Conclusions of Law and Judgment in the prior matter (*Stewart v. Liberty Northwest Ins. Corp.*, 2007 MTWCC 41); the Petition for Emergency or Expedited Declaratory Relief to Reinstate Medical Benefits; for Attorney's Fees and Penalties, Docket Item No. 1; and [Respondent's] Motion for Summary Judgment and Supporting Brief [Respondent's Motion for Summary Judgment], Docket Item No. 18.

¶ 9 In March 2008, Stewart learned that Liberty would no longer cover the expense of a prescription pain patch (Lidoderm) she had been using for several years for pain in her right knee. Liberty based its denial of payment for the Lidoderm patches on this Court's September 14, 2007, Findings of Fact, Conclusions of Law and Judgment. Liberty argues that it is not obligated to provide coverage for benefits not causally connected to Stewart's work-place injury.

¶ 10 Liberty subsequently reinstated coverage for the Lidoderm prescription under a reservation of rights.

¶ 11 On March 26, 2008, Stewart filed this petition seeking a declaratory ruling that Liberty is liable for the Lidoderm prescription.

¶ 12 Liberty filed a motion to dismiss² on July 29, 2008. The Court heard oral argument on December 9, 2008, and orally denied the motion.

¶ 13 On January 29, 2009, Liberty moved for summary judgment. Liberty argues Stewart's March 24, 2008, petition in this matter seeks to relitigate an issue previously heard and decided in this Court's September 14, 2007, Findings of Fact, Conclusions of Law and Judgment.

¶ 14 In response to Liberty's motion, Stewart presented an affidavit by Dr. Clifford R. Wheelless, III, in which Dr. Wheelless opined that a causal relationship exists between Stewart's industrial injury and current pain. Liberty argues that Dr. Wheelless's affidavit does not raise an issue of material fact, but rather is an attempt to overturn this Court's prior Findings of Fact and Conclusions of Law.³

¶ 15 Stewart also argued that neither *res judicata* nor collateral estoppel bars her claim because the issue decided in her previous petition is not identical to the one presented here.⁴

² Liberty's Motion for Judgment on the Pleadings or Alternatively Rule 12(b)(6) Motion to Dismiss [Motion for Judgment on the Pleadings], Docket Item No. 8.

³ Respondent's Motion for Summary Judgment; Liberty's Answering Brief and Motion for Summary Judgment, Docket Item No. 24.

⁴ Petitioner's Opposition to Motion for Summary Judgment, Docket Item No. 21; Affidavit of Clifford R. Wheelless, III, M.D. [Wheelless Affidavit], Docket Item No. 22.

STANDARD OF REVIEW

¶ 16 This Court views motions for summary judgment with disfavor and such motions will only be granted when there are no material facts in dispute and the moving party is clearly entitled to judgment as a matter of law.⁵ In deciding a motion for summary judgment, the petition will be “construed in the light most favorable to the [nonmoving party, whose] allegations of fact contained therein are taken as true.”⁶

DISCUSSION

¶ 17 At the outset, a clarification is warranted. In their briefs, the parties at various times use the terms *res judicata*, collateral estoppel, and issue preclusion interchangeably. As the Montana Supreme Court has explained, however, these terms are not interchangeable, but represent different doctrines with distinct elements:

Res judicata, or claim preclusion, bars the relitigation of a claim that the party has already had an opportunity to litigate. Collateral estoppel, or issue preclusion, bars the reopening of an issue that has been litigated and determined in a prior suit.⁷

¶ 18 From the briefing, it is clear that Liberty grounds its motion in collateral estoppel, or issue preclusion, and not *res judicata*, or claim preclusion. Liberty discusses only the elements of issue preclusion in its briefs. Therefore, this Order only addresses Liberty’s motion as it discusses collateral estoppel, or issue preclusion.

¶ 19 Collateral estoppel, or issue preclusion, bars relitigation of issues raised and decided in prior proceedings.⁸ The party seeking to bar a claim on collateral estoppel must satisfy the following four elements:

- (1) the identical issue raised was previously decided in a prior adjudication;
- (2) a final judgment on the merits was issued in the prior adjudication;

⁵ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

⁶ *Plouffe v. State*, 2003 MT 62, ¶ 8, 314 Mont. 413, 66 P.3d 316.

⁷ *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267.

⁸ *Kubacki v. Molchan*, 2007 MT 306, ¶ 12, 340 Mont. 100, 172 P.3d 594.

(3) the party against whom collateral estoppel is now asserted was a party or in privity with a party to the prior adjudication; and

(4) the party against whom preclusion is asserted must have been afforded a full and fair opportunity to litigate any issues which may be barred.⁹

¶ 20 The test is conjunctive. All four elements must be satisfied for collateral estoppel to apply. The identity of issues is the most crucial element in the collateral estoppel test.¹⁰ To satisfy that element, the “precise question” must have been litigated in the previous action. The Court compares the pleadings, evidence, and circumstances surrounding the actions to determine whether the issue raised is identical.¹¹ Presentation of the same or similar evidence is not determinative that the issues are identical.¹²

¶ 21 In this case, Liberty has not satisfied the identity of issues element. Liberty argues the issue raised here is identical to the issue previously raised and decided when Stewart filed a petition in this Court to request an increased impairment rating. Although Liberty is correct that the Court previously addressed the insufficiency of evidence establishing a causal connection between Stewart’s chronic pain condition and her work-related injury when it decided the impairment rating issue, that is not the precise issue raised in the present case.

¶ 22 In the current action, Stewart contends the Lidoderm patches were prescribed as a result of her work-related injury and that Liberty is obligated to provide coverage for them. Liberty’s liability for the Lidoderm patches was neither raised nor decided in the prior action. The Court only considered Stewart’s request for an increased impairment rating. Indeed, it would not have made sense for Stewart to raise the issue of Liberty’s liability for the Lidoderm patches in the previous action because Liberty had accepted liability and was paying for the patches at the time of the first trial. Accordingly, no dispute regarding that issue existed.

¶ 23 The case that is most on point to the present case is *Lund v. State Compensation Mut. Ins. Fund*.¹³ In *Lund*, a claimant (Lund) litigated his entitlement to permanent partial disability benefits pursuant to § 39-71-703, MCA. After receiving a favorable ruling from

⁹ *Id.*

¹⁰ *Finstad v. W.R. Grace & Co.*, 2000 MT 228, ¶ 29, 301 Mont. 240, 8 P.3d 778.

¹¹ *Id.*

¹² *Id.* at ¶¶ 30-31.

¹³ *Lund v. State Compensation Mut. Ins. Fund*, 263 Mont. 346, 868 P.2d 611 (1994).

this Court, Lund notified the State Fund that he was withdrawing his election to proceed under § 39-71-703, MCA, and filed a petition to seek indemnity benefits pursuant to §§ 39-71-705 through 39-71-708, MCA.¹⁴ The State Fund argued that principles of *res judicata* and collateral estoppel barred *Lund* from bringing his second action. The Montana Supreme Court rejected this argument. Regarding the issue of whether Lund was collaterally estopped from bringing his second cause of action, the Supreme Court held:

We agree that Lund's entitlement to permanent partial disability benefits under § 39-71-703, MCA (1985), was finally decided [in the prior litigation]. However . . . his entitlement to indemnity benefits is a different issue based on different statutory criteria. Lund's entitlement to indemnity benefits was neither raised nor decided in the previous litigation.

In reality, the State Fund concedes the collateral estoppel argument by recognizing that the identical issue raised here – that is, Lund's entitlement to indemnity benefits – was not litigated in the earlier case. One of the elements required for application of collateral estoppel, of course, is that the issue has been decided in a prior adjudication and is identical to the one presented. That element not being met here, collateral estoppel is not applicable.¹⁵

¶ 24 The Supreme Court's ruling in *Lund* is dispositive of Liberty's collateral estoppel argument in the present case. In *Lund*, the Supreme Court held that a subsequent action in a workers' compensation claim which seeks a different type of benefit based on different statutory criteria than the benefit sought in the first action does not satisfy the identical issue element of collateral estoppel. This is precisely the situation in the present case. In Stewart's first action, she sought an increased impairment rating under § 39-71-711, MCA. Stewart's current action seeks to establish Liberty's liability for payment of certain medical benefits – specifically, the Lidoderm patches. The statutory criteria for medical benefits are set forth at § 39-71-704, MCA. Because the current action seeks a different type of benefit based on different statutory criteria than the benefit sought in the first action, the identical issue element of collateral estoppel is not satisfied. Since collateral estoppel requires that all four elements be satisfied, I need not address the remaining three elements.

¶ 25 Stewart is not collaterally estopped from pursuing the current action. Therefore, summary judgment would be appropriate only if there are no material facts in dispute. In that regard, Stewart presented an affidavit by Dr. Wheelless, in which Dr. Wheelless opined

¹⁴ *Id.* at 347-48, 868 P.2d at 612.

¹⁵ *Id.* at 351, 868 P.2d at 614. (Citation omitted.)

that a causal relationship exists between Stewart's industrial injury and her current pain.¹⁶ Liberty argues that Dr. Wheelless's affidavit does not raise an issue of material fact, but attempts to "overturn" this Court's Findings of Fact and Conclusions of Law in the previous impairment rating action. Basically, Liberty argues that Stewart is collaterally estopped from relying on Dr. Wheelless's affidavit in opposing Liberty's motion for summary judgment. Since I have rejected Liberty's collateral estoppel argument, Dr. Wheelless's affidavit may be considered in this motion. Stewart has established a disputed issue of material fact that precludes summary judgment.

¶ 26 Finally, in its initial brief, Liberty raised the issue of whether this Court has jurisdiction to decide this dispute. Specifically, Liberty argues:

Taking Stewart's petition as a whole, the only theory on which [Liberty] can glean Stewart is basing her case is equitable estoppel. This comes from the allegations that Liberty previously paid for the patches. Liberty's position is that this Court does not have jurisdiction to sit in equity and therefore cannot grant the relief sought.¹⁷

¶ 27 Irrespective of how Liberty characterizes the relief Stewart seeks, this Court clearly has jurisdiction to resolve this dispute. Section 39-71-2905(1), MCA, provides in pertinent part that, "the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under [the Workers' Compensation Act]." No matter how you slice it, this case involves a dispute concerning Stewart's entitlement to certain medical benefits under the Workers' Compensation Act. Therefore, I conclude this Court has jurisdiction to resolve the present dispute.

ORDER

¶ 28 Liberty's motion for summary judgment is **DENIED**.

DATED in Helena, Montana, this 4th day of June, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Michael J. San Souci
Larry W. Jones
Submitted: April 8, 2009

¹⁶ Wheelless Affidavit, ¶ 3.

¹⁷ Motion for Judgment on the Pleadings at 3.